

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 22 April 2004

Case Numbers: 2003-BLA-00232
2003-BLA-06246

In the Matter of

DOMENICK NATALE (DECEASED)
AND SHIRLEY NATATLE (WIDOW)
Claimant

v.

INTERNATIONAL ANTHRACITE CORP.
Employer

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS
Part-in-Interest

APPEARANCES:

Helen M. Koschoff, Esq.
For the Claimant

Frank L. Tamulonis, Jr., Esq.
For the Employer

Before: PAUL H. TEITLER,
Administrative Law Judge

DECISION AND ORDER - DENYING BENEFITS

This proceeding arises from a request for modification on a claim for benefits under the Black Lung Benefits Act of 1977, 30 U.S.C. § 901, et seq. by the deceased miner which has been consolidated with a claim for survivor's benefits filed under the Act by the deceased miner's widow. In accordance with the Act and the regulations issued thereunder, the two cases were referred by the Director, Office of Workers' Compensation Programs to the Office of Administrative Law Judges for a formal hearing.

Benefits under the Act are awarded to miners who are totally disabled within the meaning of the Act due to pneumoconiosis, or to the survivors of miners whose deaths were caused by pneumoconiosis. Pneumoconiosis is a dust disease of the lungs arising from coal mine employment and is commonly known as “black lung”.

A formal hearing was held before the undersigned on November 7, 2003, in Reading, Pennsylvania at which all parties were afforded full opportunity, in accordance with the Rules of Practice and Procedure (29 C.F.R. Part 18), to present evidence and argument as provided in the Act and the regulations issued thereunder, set forth in Title 20, Code of Federal Regulations, Parts 410, 718, 725, and 727. Claimant and Employer were represented by counsel. No appearance was entered on behalf of the Director, Office of Workers’ Compensation Programs.

At the hearing, Employer’s Exhibits 1 through 30 were admitted with the qualification that re-readings of x-ray films already in the record from prior denials would not be allowed, but re-reading of x-ray films included in the hospital records would be allowed. Subsequent to the hearing, Employer withdrew the readings of the May 12, 1993 and November 1, 1994 x-ray films found at Employer’s Exhibits 25, 26, 27, and 28. In addition, the record includes the Director’s Exhibits as labeled 1 through 117 which are hereby admitted into evidence. Claimant was allowed time post-hearing to submit the transcript of a deposition of Dr. Kraynak and a review report by either Dr. Prince or Dr. Simelaro. Claimant’s has not submitted these documents and the record is now closed¹

Procedural History

In the deceased miner’s second claim for benefits, in a Decision and Order Denying Benefits issued on April 14, 2000, Administrative Law Judge Kaplan stated the presence of pneumoconiosis which arose out of coal mine employment had been established in the miner’s first claim for benefits which had been denied by Judge Kaplan on January 14, 1988 (DX 59, 22-34). In the denial of April 14, 2000, therefore, Judge Kaplan reviewed the evidence on the current claim, filed on February 17, 1999, to determine if Claimant-miner had established a material change in conditions by showing he was now totally disabled due to his respiratory or pulmonary condition. Judge Kaplan found Claimant-miner had not established a material change in condition since he found the valid pulmonary function studies non-qualifying, the blood gas studies non-qualifying and the medical opinion report of Dr. Rashid which concluded the miner was not totally disabled due to his respiratory or pulmonary condition to be better supported and better reasoned than the contrary medical reports by Dr. Kraynak and Dr. Terlingo. Accordingly, Judge Kaplan denied the claim for benefits and that denial was affirmed by the Benefits Review Board on June 25, 2001 (DX 58, 73).

On February 7, 2002, on behalf of the deceased miner, his representative requested modification of the denial of benefits and submitted a letter from Dr. R. Kraynak dated November 28, 2001 (DX 74, 75). The District Director denied the request for modification on

¹ The following abbreviations will be used when citing to the record: DX - Director’s Exhibits; EX - Employer’s Exhibits; and TR - Transcript of Hearing of November 7, 2003.

May 10, 2002 and on behalf of the deceased miner, his representative requested a hearing on May 23, 2002 (DX 80, 81).

On March 14, 2002, the deceased miner's widow applied for survivor's benefits (DX 86). Neither the widow nor her representative responded to requests from the District Director to submit information or evidence (DX 90, 93). On June 11, 2002, the District Director proposed the widow's claim be denied by reason of abandonment (DX 94). Claimant-widow then requested a hearing on June 12, 2002 (DX 95). On January 21, 2003, Administrative Law Judge Romano of this Office remanded the case. In this remand order, Judge Romano made no comment on the District Director's denial by reason of abandonment (DX 108). On remand, the District Director issued an order to show cause why the case should not be returned to the Office of Administrative Law Judges for a decision on the abandonment issue (DX 109). In response, Claimant submitted additional medical evidence and requested the district director address the medical issues (DX 111). Employer requested the denial by reason of abandonment on the widow's claim be affirmed (DX 112).

In an Order on Remand, issued on May 9, 2003, the District Director noted that there was no motion or written agreement of the Director to amend the issue of whether the widow's claim was properly denied by reason of abandonment at the hearing. The District Director stated that the hearing before this Office should be limited to the issue of whether the widow's claim was properly denied by reason of abandonment and if the Administrative Law Judge found the claim was not properly denied by reason of abandonment, then the matter should be remanded to the District Director for completion of administrative processing. The District Director also noted there was no finding by Judge Romano on the determination made by the District Director on the modification request made on the deceased miner's claim (DX 113). The claims were then referred to this Office for further proceedings (DX 115, 116).

At the hearing, the parties did not raise or discuss the issue of whether or not the widow's claim was properly dismissed by the District Director by reason of abandonment. In a post-hearing brief, formatted as a proposed decision and order denying benefits, Employer's representative noted the issue, but did not include any findings or argument on this issue at any point in this document. Likewise, although the Director entered an appearance by letter dated September 11, 2003, the Director has not submitted any further correspondence or argument regarding the issue of whether or not the widow's claim should be denied by reason of abandonment.

Subsequent to the order by the District Director denying the claim by abandonment, both Claimant and Employer have submitted extensive evidence regarding the medical issues in the widow's claim. The widow's representative should have, in a timely manner, addressed the initial letters and order to show cause requesting documentation following the filing of the widow's claim. However, since both parties have now submitted evidence addressing the merits of the widow's claim, I find it would be unfair to the widow to penalize her for her representative's failure to respond in a timely manner to the District Director's orders of April 26, 2002 and May 11, 2002. In addition, while the Director's order on remand is technically correct that the widow's claim should be remanded for completion of administrative processing in the event that I determine that the widow's claim was not properly denied by reason of

abandonment, I have determined to address the widow's claim on the merits. As noted above, both parties have addressed the merits of the widow's claim and submitted evidence on the issues raised in that claim. To spend further time remanding the widow's claim for administrative proceedings seems unnecessarily cumbersome. Accordingly, in the interests of justice, I will address the widow's claim on the merits.

At the hearing, Employer agreed to the finding in the miner's claim that the miner worked nineteen and one-quarter years in coal mine employment (Tr 5). Employer contended, however, that although the presence of pneumoconiosis which arose out of coal mine employment had been established in the miner's claim and although the Employer had not challenged that finding on the appeal to the Benefits Review Board, that issue was not agreed to in these proceedings (Tr 5). In addition, the Employer contends the miner was not totally disabled by pneumoconiosis prior to his death and, thus, the request for modification of the miner's claim should be denied. The Employer also contends the miner's death was not due to pneumoconiosis and, therefore, the widow's claim should be denied.

Based on an analysis of the entire record, including the transcript, exhibits, and representations of the parties, with consideration being given to the applicable statutory provisions, regulations and case law, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Medical Evidence

The prior descriptions of medical evidence set forth in Judge Kaplan's determinations of January 14, 1988, March 14, 1991, and April 14, 2000 are hereby incorporated by reference (DX 22, 58). In addition, the following additional evidence has been submitted:

Hospital records from Good Samaritan Hospital dated July, 2001 indicate the miner was hospitalized for intestinal complaints and problems. Following testing, the miner was diagnosed with a malignant neoplasm in his stomach on July 24, 2001. The hospital record note a prior diagnosis of coal worker's pneumoconiosis as well as diabetes (EX 1, 2). Further testing in August and September, 2001 during hospitalizations at Good Samaritan Hospital resulted in a diagnosis of a second malignant neoplasm in the intra abdominal lymph nodes. During a surgical procedure on August 17, 2001, for a partial resection of the miner's stomach as a palliative measure to treat the carcinoma, the miner had extensive bleeding. The surgery was stopped, the miner treated and the surgical procedure performed one week later on August 24, 2001 (EX 3). Biopsies conducted after the surgical procedure confirmed the carcinoma of the stomach, metastatic to the abdominal lymph nodes (EX 3). The miner was hospitalized again in late November, 2001 through December 1, 2001 for treatment of complications which were due to the chemotherapy treatment for his stomach cancer (EX 4). The miner's widow testified after this hospitalization he was treated at home by Covenant Hospice Program and no medical doctors visited him at home (Tr. 20). The miner died at home on January 20, 2002.

Dianne Snyder Zimmerman, deputy coroner and funeral director listed the cause of death as metastatic cancer of the lung due to coal miner's pneumoconiosis on the death certificate (DX 87).

Records from Dr. Singla, the miner's treating physician for the stomach cancer, were included in the record. Dr. Singla noted a diagnosis of adenocarcinoma of the distal body diagnosed on endoscopy in August, 2001. Dr. Singla saw the miner multiple times each month from August, 2001 through November, 2001 and always noted a diagnosis of gastric carcinoma. In September, 2001, Dr. Singla reported palliative chemotherapy treatment was discussed with the family due to the miner's poor prognosis. In November, 2001 anemia secondary to chemotherapy was noted. Dr. Singla apparently did not see the miner again after his dismissal from the hospital on December 1, 2001 and during the care the miner received at home from the Covenant Hospice Program (DX 112, EX 10).

Records from Dr. Terlingo were also submitted into the record. On April 30, 2002, Dr. Terlingo stated she was the miner's treating physician since 1993. Dr. Terlingo reported a diagnosis of chronic obstructive pulmonary disease and diabetes. Dr. Terlingo referenced pulmonary function study results from 1994 and 1999 as well as chest x-ray findings of coal worker's pneumoconiosis. She stated the miner was totally disabled due to black lung and that black lung was a significant contributing factor in his death (DX 104, 111). In her office records on November 7, 2001, she noted a diagnosis of gastric cancer and the fact that the miner was between chemotherapy treatments. In this office visit, she again cited pulmonary function study results of October, 1999 and stated chest x-ray findings showed known coal worker's pneumoconiosis. Dr. Terlingo noted the miner had been hospitalized with gastric cancer (EX 9).

On November 28, 2001, in a brief letter, Dr. R. Kraynak stated he had been the miner's treating physician for "several years" and he stated the miner's complaints were increasing shortness of breath, productive cough and exertional dyspnea. Dr. R. Kraynak stated the miner had a worsening of his condition and he was totally disabled by coal worker's pneumoconiosis due to coal mine employment. Dr. R. Kraynak made no mention of the miner's gastric carcinoma in this letter (DX 75).

In a letter dated January 8, 2003, Dr. R. Kraynak stated he had been the miner's treating physician for coal worker's pneumoconiosis and last examined the miner on April 5, 2001. In addition to coal worker's pneumoconiosis, Dr. R. Kraynak stated in this letter, the miner had developed stomach carcinoma which was treated with surgery and which had metastasized. He also noted the miner's death at home on January 20, 2002. Dr. R. Kraynak stated he had reviewed the miner's hospital records which noted shortness of breath, bronchitis, and pneumonia and which included medications for chronic respiratory conditions. He stated Dr. Fino's review, discussed below, was insufficient since Dr. Fino concluded the miner did not have coal worker's pneumoconiosis which is contrary to findings in the living miner's case. In addition, Dr. Fino's conclusion there was no evidence of any obstructive or restrictive ventilatory impairment is contrary to the medical records. Dr. R. Kraynak stated Dr. Creech's review was also flawed since he ignored the miner's history of pneumoconiosis, chronic respiratory medications and findings of abnormal lung sounds in the hospital records. Dr. R. Kraynak concluded the miner was totally disabled from coal worker's pneumoconiosis and based on the

medical records, it was his opinion coal worker's pneumoconiosis hastened the miner's death and he would have been able to survive the metastatic carcinoma to a greater degree absent the shortness of breath and diminished pulmonary reserve (DX 111).

The employer submitted Dr. R. Kraynak's office visit records into the record. These consist on three visits in 1999, four in 2000, and two in 2001, all of which include very brief illegible handwritten notations and which compromise three pages total for the nine visits. Legible parts of the notations indicate the miner's weight was taken, complaints listed, blood pressure taken. There are no legible indications in these notations that any pulmonary testing was performed. There is no indication in these notes that Dr. Kraynak was contacted during the miner's extensive hospitalizations from July through December, 2001 (EX 12).

On January 10, 2003, Dr. M. Kraynak stated he had treated the miner several times since August 25, 1999 for black lung disease. Dr. M. Kraynak stated he had reviewed hospital records and his office notes and it was his opinion coal worker's pneumoconiosis was a significant contributing factor in the miner's death and the miner would have been able to survive longer without the pulmonary impairment due to pneumoconiosis. During his life, Dr. M. Kraynak stated, the miner was totally disabled secondary to coal worker's pneumoconiosis which arose out of coal mine employment (DX 111).

On November 12, 2002, Dr. R. Creech, a board certified internist and board certified oncologist, reviewed the medical records. Dr. Creech noted the miner had moderately differentiated gastric adenocarcinoma which was palliatively resected on August 24, 2001. Dr. Creech stated the miner also had multiple metastatic nodes in the peripancreatic, pericaval and periaortic areas, and by September 20, 2001 there was also evidence of liver metastases. On November 24, 2001, the miner was febrile and neutropenia secondary to chemotherapy. In addition he had deep vein thrombophlebitis and atrial fibrillation. Dr. Creech stated it was a mistake for the deputy coronary to list metastatic cancer of the lung on the death certificate since there was no evidence of metastases to the lungs in any of the medical records. Dr. Creech concluded the miner's death was due to metastatic gastric cancer not related to pneumoconiosis. He stated the miner's past history of pneumoconiosis and chronic obstructive pulmonary disease did not hasten his death due to gastric cancer (EX 5).

At a deposition taken on October 31, 2003, Dr. Creech stated that areas of the tumor were poorly differentiated which meant the tumor's growth was very aggressive. The palliative surgery was not to cure the gastric cancer, but was an attempt to make the miner more comfortable. The palliative chemotherapy was another attempt to shrink the tumor and make them miner feel more comfortable. By November, 2001, it was evident the chemotherapy was not working and the miner would die within a short period of time. Dr. Creech stated there were no notes in any of the extensive hospital records that show treatment of a pulmonary condition. Rather, Dr Creech stated, the problem being treated was the miner's stomach cancer which spread, the therapy offered for the stomach cancer and the complications which arose from the cancer and treatment. There was no reference to any problems with the miner's lungs. Dr. Creech reiterated his written finding that there was no evidence of the cancer spreading to the miner's lung or that lung cancer was present. He stated coal worker's pneumoconiosis had nothing to do with the cause of the miner's death. The cause of the miner's death was

progressive metastatic stomach cancer. He agreed the miner had prior conditions, coal worker's pneumoconiosis and diabetes, but he stated these medical conditions had nothing to do with the miner's death from stomach cancer. Dr. Creech discounted Dr. Kraynak's report of April, 2001 since it was written before the miner's stomach cancer was diagnosed in July and August, 2001 (EX 16).

On December 3, 2002, Dr. G. Fino, a pulmonary specialist, reviewed the medical records. Dr. Fino stated there is no evidence of clinical or legal pneumoconiosis based on negative chest x-ray reports and no evidence of obstruction, restriction, or ventilatory impairment on spirometric evaluations. Dr. Fino stated the miner's death was due to gastric cancer. The hypoxemia the miner had while acutely ill with gastric cancer was not representative of his chronic steady-state oxygenation. Likewise, the hypoxemia that occurred in 1991 while he was in the hospital with pneumonia is not representative of his chronic steady-state oxygenation. Dr. Fino noted even if the miner had coal worker's pneumoconiosis, he was not disabled by coal worker's pneumoconiosis since there was no objective evidence of a respiratory impairment present. Rather his disability was due to gastric cancer and coal worker's pneumoconiosis did not cause, contribute to nor hasten his death (EX 7).

At a deposition taken on October 27, 2003, Dr. Fino stated the pulmonary function study of 1999 showed some obstructive lung disease was present on the FEV1/FVC ratio, but not a clinically significant impairment since the FVC and FEV-1 values were both normal. In addition, Dr. Fino stated the miner's FEV-1 value improved after the use of bronchodilators and, thus, if an impairment was present, it was not consistent with coal worker's pneumoconiosis. There is no evidence of any pulmonary impairment, but even if there were, the miner's death was from cancer a uniformly fatal disease. Dr. Fino stated coal worker's pneumoconiosis could hasten a miner's death, but only if there is objective evidence of a lung injury due to coal worker's pneumoconiosis which was not the case for this miner. Dr. Fino stated there is no evidence that the miner's lung disease caused, contributed to or hastened his death from widely metastatic cancer. In addition, there is no evidence of a significant pulmonary disease which would have prevented the miner from performing his usual coal mine employment or which contributed to or hastened his death (EX 15).

DISCUSSION AND CONCLUSIONS — MINER'S CLAIM

The miner's claim was filed February 17, 1999 (Dir. Ex. 1) and the request for modification was filed on February 7, 2002 (DX 74). Therefore, entitlement to benefits must be established under the regulatory criteria at Part 718. To be entitled to benefits under Part 718, a claimant must establish by a preponderance of the evidence that (1) he suffers from pneumoconiosis; (2) the pneumoconiosis arose out of coal mine employment; (3) he is totally disabled; and (4) his total disability is caused by pneumoconiosis. *See Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986). Failure to establish any of these elements precludes recovery under the Act.

The request for modification is governed by Section 725.310 of the regulations which provides that any party may request modification of the denial of a claim if such request is filed within one year of the denial. Under Section 725.310(a), the terms of the award or denial of

benefits can be reconsidered if the party asking for modification can establish a change in conditions or mistake in determination of fact.

Where mistake of fact forms the grounds for the modification request, new evidence is not a prerequisite, and mistake of fact may be corrected whether demonstrated by new evidence, cumulative evidence or further reflection on evidence initially submitted. *Kovac v. BCNR Mining Corporation*, 16 BLR 1071 (1992), *modifying* 14 BLR 1-156 (1990). Change in condition as an alternate ground for modification focuses on whether there has been a worsening of the miner's pulmonary disease to the point that it is now totally disabling.

I have reviewed Judge Kaplan's denial of April 14, 2000 as affirmed by the Benefits Review Board on June 25, 2001. I find no mistake of fact in these determinations. The record includes the additional medical reports set forth above. Only Drs. Kraynak and Terlingo state the miner was totally disabled prior to his death, however, no objective laboratory test data has been submitted to support their findings. In contrast, on review of the hospital records, Dr. Creech and Dr. Fino note no notations of any pulmonary problems during the miner's many and lengthy hospitalizations for gastric cancer from July through December, 2001 prior to his death in January, 2002. Dr. Fino notes hypoxemia present during the acute illness with the gastric cancer is not indicative of the miner's steady-state oxygenation. Based on the lack of any pulmonary treatment or pulmonary findings in the extensive hospital records from July, 2001 through December, 2001 and based on the fact the statements of Drs. Kraynak and Terlingo are conclusory and without objective support, I find the evidence is not sufficient to establish the miner's pulmonary disease worsened to the condition it was totally disabling after the denial of April, 2000 and prior to his death in January, 2002. Accordingly, the request for modification of the miner's claim shall be denied and the miner's claim shall remain denied.

DISCUSSION AND CONCLUSIONS — WIDOW'S CLAIM

Claimant-widow filed her claim on March 14, 2002 (DX 86). Therefore, entitlement to benefits must be established under the regulatory criteria at Part 718. Section 718.205(a) provides that benefits are available to eligible survivors of a miner whose death was due to pneumoconiosis which arose out of coal mine employment. An eligible survivor will be entitled to benefits if claimant proves that: 1) The miner had pneumoconiosis; 2) The miner's pneumoconiosis arose out of coal mine employment; and 3) The miner's death was due to pneumoconiosis as provided by Section 718.205. For purposes of claims filed after January 1, 1982, death will be considered due to pneumoconiosis if any of the following criteria is met: 1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death; or 2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death; or 3) Where the presumption set forth in § 718.304 (evidence of complicated pneumoconiosis) is applicable. 20 C.F.R. 718.205(c). The regulations also provide that survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. 718.205(c)(4). The regulations further provide that pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. 718.205(c)(5).

As noted above, the presence of pneumoconiosis was established in the miner's claim. Employer did not challenge this finding on the two appeals before the Benefit Review Board, however, Employer argued at the hearing that since the prior claims were denied, there was no basis on which the Employer could have appealed the finding of pneumoconiosis. I have reviewed the evidence of record, including the evidence relied upon by Judge Kaplan in finding pneumoconiosis was established as well as the extensive hospital records which consistently include a diagnosis of coal worker's pneumoconiosis. Although the Employer has submitted re-readings of various chest x-ray films which are negative for pneumoconiosis, I find the x-ray reports relied upon by Judge Kaplan as supported by the hospital records noting a diagnosis of pneumoconiosis more persuasive. Accordingly, I find the presence of pneumoconiosis which arose out of coal mine employment has been established. Therefore, the Claimant-widow's entitlement to benefits on her survivor's claim is dependent upon her meeting her burden of establishing that the miner's death was due to coal workers' pneumoconiosis. 20 C.F.R. §718.205.

The medical reports are set forth above. Initially I note there is no support for the listing of death due to lung metastases due to coal worker's pneumoconiosis on the death certificate in any of the medical records submitted in this case. I also note the deputy coroner is not a physician. Based on the absence of any notation of lung cancer or lung metastases in the extensive hospital records, I accord great weight to Dr. Creech's statement that that finding on the death certificate was a mistake. I accord no weight to the listing of coal worker's pneumoconiosis as a cause of death on the death certificate.

No physician concludes the coal worker's pneumoconiosis present caused the miner's death. All the physicians agreed the miner's death was due to gastric cancer which had metastasized to nodes in the peripancreatic, pericaval and periaortic areas as well as to the miner's liver. Thus, death due to pneumoconiosis is not established under subsection 718.205(c)(1).

Drs. R. and M. Kraynak and Dr. Terlingo, however, stated that coal worker's pneumoconiosis was a significant contributing factor in the miner's death. These physicians do not cite any findings in the extensive medical treatment notes during the miner's hospitalizations from July through December, 2001 to support their conclusions except for Dr. Kraynak's statement that the hospital records showed pneumonia in 1991, shortness of breath and respiratory medications. Dr. Kraynak, however, does not list the respiratory medications nor cite specific dates when these were prescribed. Moreover, neither Dr. R. Kraynak nor Dr. M. Kraynak nor Dr. Terlingo provides any objective findings such as pulmonary test results to support their conclusions. In addition, as noted above, the office notes submitted were brief and cursory and include no findings to support the conclusions by these physicians that pneumoconiosis contributed to the miner's death.

In contrast, Drs. Creech and Fino relied upon specific findings or lack of specific findings in the hospital records to support their conclusions that pneumoconiosis did not contribute to any pulmonary problems during the miner's final hospitalizations. These physicians noted the hospital records include extensive and lengthy discussion of the fatal gastric cancer which was well advanced when it was discovered. These medical records included no notations of concern

regarding the miner's pulmonary condition and, in fact, the concern over the initial stomach resection was due to excessive bleeding and not any pulmonary problem. Dr. Fino noted that pulmonary function study results from 1999 showed no evidence of any clinically significant impairment. This finding is consistent with Judge Kaplan's prior finding which was affirmed by the Benefits Review Board. Thus, based on earlier objective test results and the absence of any mention of pulmonary problems in the hospital records, these two physicians concluded pneumoconiosis was not a significant contributing factor in the miner's death.

I find the physicians who concluded the miner's pneumoconiosis contributed to his death did not provide sufficient support for their conclusions. In contrast, I find the reports of Drs. Creech and Fino well supported by the extensive medical and hospital records. Based on the more persuasive reports of Drs. Creech and Fino, I conclude Claimant-widow has not established the miner's death was hastened by the pneumoconiosis. Therefore, since the weight of the record does not establish that the miner's death was caused by pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death or that pneumoconiosis hastened the miner's death, I find Claimant has not established the miner's death was due to pneumoconiosis as required by Section 718.205(c).

Entitlement

As Claimant has not established that the miner's death was due to pneumoconiosis under the provisions of Section 718.205(c), she is not entitled to survivor's benefits under the Act.

ORDER

The request for modification of the denial of benefits issued on April 14, 2000 and affirmed by the Benefits Review Board on June 25, 2001 on the claim of Dominick Natale, deceased for benefits under the Act is hereby denied. The claim for benefits by Domick Natale, deceased, remains denied.

The claim of Shirley F. Natale, widow of Dominick Natale, deceased miner, for survivor's benefits is hereby denied.

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PAUL H. TEITLER
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 (thirty) days from the date of this Decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington, D.C. 20018-7601. A copy of this notice must also be served on Donald S. Shire, Associate Solicitor, Room N-2605, 200 Constitution Avenue, N.W.,